

The House Committee on Judiciary offers the following substitute to SB 57:

A BILL TO BE ENTITLED
AN ACT

1 To provide for a short title; to amend Chapter 6A of Title 7 and Title 44 of the Official Code
2 of Georgia Annotated, relating to the "Georgia Fair Lending Act" and property, respectively,
3 so as to provide for greater public protection relative to home mortgages; to provide for and
4 change definitions; to change provisions relating to limitations on home loans; to provide for
5 restrictions on subprime home loans and creditor's actions relative to such loans; to provide
6 for duties for mortgage brokers; to change provisions relating to demand for possession
7 involving foreclosed property; to change provisions relating to sales made on foreclosures
8 under the power of sale; to provide, under certain circumstances, for an opportunity, prior
9 to foreclosure, for a debtor to cure a foreclosure and bring the debt current by making all past
10 due payments along with any late fees and charges; to provide for related matters; to provide
11 for an effective date and construction; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 This Act shall be known and may be cited as the "Home Mortgage Practices Reform Act of
15 2010."

16 **SECTION 2.**

17 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the "Georgia
18 Fair Lending Act," is amended by revising Code Section 7-6A-2, relating to definitions, as
19 follows:

20 "7-6A-2.

21 As used in this chapter, the term:

22 (1) 'Acceleration' means a demand for immediate repayment of the entire balance of a
23 home loan.

24 (2) 'Affiliate' means any company that controls, is controlled by, or is under common
25 control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

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(3) 'Annual percentage rate' means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the Official Staff Commentary on Regulation Z published by the Board of Governors of the Federal Reserve System.

(4) 'Bona fide discount points' means loan discount points knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the interest rate applicable to the home loan; provided, however, that the undiscounted interest rate for the home loan does not exceed by more than one percentage point the required net yield for a 90 day standard mandatory delivery commitment for a home loan with a reasonably comparable term from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

(5) 'Borrower' means any natural person obligated to repay the loan including a coborrower or cosigner.

(6) 'Creditor' means a person ~~who~~ or entity that both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person or entity to whom ~~whom~~ which the debt arising from the home loan transaction is initially payable. ~~Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly for compensation solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor~~ Creditor shall also include mortgage brokers. Creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan. A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity.

(7) 'Department' means the Department of Banking and Finance.

(8) 'Flipping a subprime home loan' means the making or arranging of a subprime home loan to a borrower who refinances an existing home loan when the new loan does not have a net benefit to the borrower considering all of the circumstances including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

~~(7)~~(9) 'High-cost home loan' means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph ~~(17)~~ (23) of this Code section.

~~(8)~~(10) 'Home loan' means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

(A) A reverse mortgage transaction;

(B) A loan that provides temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;

(C) A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;

(D) A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;

(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

(F) A loan primarily for business, agricultural, or commercial purposes.

~~(9)~~(11) 'Make' or 'makes' means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

~~(10)~~(12) 'Manufactured home' means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files

a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

(13) 'Mortgage broker' means any person or entity brokering a home loan, which shall include any person or entity that directly or indirectly for compensation solicits, places, or negotiates home loans for others or offers to solicit, place, or negotiate home loans for others or that closes home loans which may be in the person's or entity's own name as lender with funds provided by others and which loans are thereafter assigned to the person or entity providing the funding of such loans.

(14) 'Negative amortization' means any payment term under which the outstanding principal balance on a home loan will increase at any time over the course of the home loan because the regular periodic payments do not cover the full amount of the interest that accrues on the underlying principal. Such term shall not include reverse mortgage transactions.

~~(11)~~(15) 'Open-end credit plan' or 'open-end loan' means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

~~(12)~~(16) 'Points and fees' means:

(A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. 226.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 226.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person or entity other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys'

fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and

(G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person or entity other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise;

notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

(17) 'Prepayment fee or penalty' means any fee, charge, penalty, or premium that is required to be paid to a lender when all or any portion of the outstanding principal amount is repaid on a home loan before its scheduled time of maturity. Such term shall not include a fee, charge, penalty, or premium assessed by the lender as a consequence of a borrower's default.

~~(13)~~(18) 'Process,' 'processes,' or 'processing' means to act as a processor.

~~(14)~~(19) 'Processor' means any ~~person~~ individual that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing statements, provided that processor shall not include ~~persons~~ an individual on the ~~grounds~~ ground that ~~they are~~ he or she is engaged in data processing or statement generation services for home loans.

~~(15)~~(20) 'Servicer' means the same as set forth in 24 C.F.R. 3500.2.

~~(16)~~(21) 'Servicing' means the same as set forth in 24 C.F.R. 3500.2.

(22) 'Subprime home loan' means a home loan with an annual percentage rate of interest that exceeds the average prime offer rate as published by the Board of Governors of the Federal Reserve System for a comparable term as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first priority lien or by 3.5 or more percentage points for loans secured by a subordinate priority lien.

~~(17)~~(23) 'Threshold' means:

(A) Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the

regulations adopted pursuant thereto by the Federal Reserve Board, including Section 12 C.F.R. 226.32; or

(B) The total points and fees payable in connection with the loan, excluding not more than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

~~(18)(24)~~ (24) 'Total loan amount' means the amount calculated as set forth in 12 C.F.R. 226.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. For open-end loans, the total loan amount shall be calculated using the total credit line available under the terms of the home loan as the amount financed.

(25) 'Yield spread premium' means any payment made by a lender as a result of a mortgage broker originating a loan that has a higher interest rate than the lender's par rate for which the borrower qualifies.'

SECTION 3.

Said chapter is further amended by revising Code Section 7-6A-3, relating to limitations on home loans, as follows:

"7-6A-3.

All home loans shall be subject to the following limitations and prohibited practices:

(1) No creditor shall make a home loan that finances, directly or indirectly:

(A) Any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or

(B) Any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance;

provided, however, that for the purposes of this Code section, any premiums or charges calculated and paid on a monthly basis shall not be considered financed directly or indirectly by the creditor;

(2) No creditor or servicer shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt;

(3) No creditor or servicer may charge a borrower a late payment charge unless the loan documents specifically authorize the charge, the charge is not imposed unless the

payment is past due for ten days or more, and the charge does not exceed 5 percent of the amount of the late payment. A late payment charge ~~may~~ shall not be imposed more than once ~~with respect to~~ on a particular late payment. If a late payment charge is deducted from a payment made on the home loan and such deduction results in a subsequent default on a subsequent payment, no late payment charge ~~may~~ shall be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due; ~~and~~

(4) No creditor or servicer may charge a fee for informing or transmitting to any person or entity the balance due to pay off a home loan or to provide a release upon prepayment. When such information is provided by facsimile or if it is provided upon request within 60 days of the fulfillment of a previous request, a creditor or servicer may charge a processing fee up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event no more than ~~five~~ three business days after the request;

(5) No prepayment fee or penalty shall be assessed or collected under the terms of a home loan except as provided in this paragraph. Any prepayment fee or penalty in violation of this paragraph shall be void and unenforceable; provided, however, that:

(A) Mortgage interest which may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty; and

(B) A prepayment fee or penalty shall not be prohibited when the borrower pays the outstanding principal balance in full and closes the account during the first three years of any extension of credit under an open-end home equity line of credit secured by a subordinate priority lien; and

(6) Yield spread premiums shall be allowed in the origination and closing of home loans only to the extent that such premium is credited entirely for the benefit of the borrower to offset the costs of closing a home loan or mortgage broker origination charges."

SECTION 4.

Said chapter is further amended by adding new Code sections to read as follows:

"7-6A-5.1.

(a) No subprime home loan shall include indebtedness which encompasses or contemplates negative amortization. Any amount of principal derived from negative amortization and included in a subprime home loan shall be void and unenforceable.

(b) No creditor shall engage in the act or practice of flipping a subprime home loan.

(c)(1) No creditor shall make a subprime home loan to a borrower unless the creditor reasonably and in good faith believes at the time the subprime home loan is closed that the borrower will be able to make the scheduled loan payments, tax and insurance payments associated with the subprime home loan, and any mortgage that will be made contemporaneously to the same borrower. The repayment analysis shall include the assumption of a fully indexed rate and a fully amortized repayment schedule, the borrower's debts and other obligations, and verified income or assets, other than the borrower's equity in the principal dwelling. Creditors shall verify income and assets using IRS Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the borrower's income or assets.

(2) For purposes of this subsection, there shall be a rebuttable presumption that the borrower is able to make the scheduled payments to repay the obligation if, at the time the subprime home loan is consummated, said borrower's total monthly debts, including amounts under the subprime home loan, do not exceed 50 percent of said borrower's monthly gross income as verified by tax returns, payroll receipts, or other third-party income verification. In a refinance of a subprime home loan on the same real property, there shall be a rebuttable presumption that the borrower will be able to make the scheduled payments to repay the debt obligation without reverification of income and debts so long as all payments on the refinanced subprime home loan are less than all remaining payments on the original subprime home loan.

(3) In the case of a subprime home loan with a balloon payment that is due later than five years after the subprime home loan is consummated, the creditor shall not be required to verify that the borrower has income and assets at the time of consummation of such subprime home loan sufficient to pay the balloon payment when it becomes due.

7-6A-5.2.

(a) A mortgage broker, in addition to any other duties imposed by law, shall:

(1) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the brokering or making of any home loan;

(2) Safeguard and account for any money handled for the borrower;

(3) Follow reasonable and lawful instructions from the borrower;

(4) Use reasonable skill, care, and diligence; and

(5) Disclose to the borrower prior to closing, orally and in writing, all sources and amounts of compensation that the mortgage broker will receive from placing the borrower in a home loan.

317 (b) The duties and standards of care created in this Code section shall not be waived or
318 modified."

319 **SECTION 5.**

320 Said chapter is further amended by adding a new Code section to read as follows:

321 "7-6A-8.1.

322 Nothing contained in this chapter shall limit any rights, duties, remedies, or penalties
323 imposed by law, including, without limitation, Part 2 of Article 15 of Chapter 1 of Title 10,
324 the 'Fair Business Practices Act of 1975.'"

325 **SECTION 6.**

326 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
327 Section 44-7-50, relating to demand for possession, by adding a new subsection to read as
328 follows:

329 "(c) Where the owner holds the property pursuant to a foreclosure sale of residential real
330 estate under powers contained in mortgages, deeds, or other lien contracts as provided in
331 Code Section 44-14-162, the owner or the agent, attorney at law, or attorney in fact of the
332 owner shall include evidence of such ownership by presenting a copy of the deed under
333 power which has been filed for record and file-stamped in the office of the clerk of the
334 superior court of the county in which the real property is located at the time of making the
335 affidavit under oath as provided in subsection (a) of this Code section, and such
336 file-stamped deed under power shall be attached to such affidavit."

337 **SECTION 7.**

338 Said title is further amended by revising Code Section 44-14-162.2, relating to sales made
339 on foreclosures under the power of sale, mailing or delivery of notice to debtor, and
340 procedure, as follows:

341 "44-14-162.2.

342 (a) Notice of the initiation of proceedings to exercise a power of sale in a mortgage,
343 security deed, or other lien contract shall be given to the debtor by the secured creditor no
344 later than 30 days before the date of the proposed foreclosure. Such notice shall be in
345 writing, ~~shall include the name, address, and telephone number of the individual or entity~~
346 ~~who shall have full authority to negotiate, amend, and modify all terms of the mortgage~~
347 ~~with the debtor,~~ and shall be sent by registered or certified mail or statutory overnight
348 delivery, return receipt requested, to the property address or to such other address as the
349 debtor may designate by written notice to the secured creditor. The notice required by this

Code section shall be deemed given on the official postmark day or day on which it is received for delivery by a commercial delivery firm.

(b)(1) Nothing in this subsection Code section shall be construed to require a secured creditor to negotiate, amend, or modify the terms of a mortgage instrument; provided, however, that during the 30 day notice period provided in subsection (a) of this Code section, the debtor shall have a right to cure the default and reinstate the loan to a current status by paying the creditor the full amount of all past due payments along with any late fees, past due taxes, past due insurance, actual out-of-pocket attorney fees and foreclosure costs, advances made by the lender, and any other charges necessary to bring the debt current. In the event that the debtor tenders such sums, the creditor shall not proceed with foreclosure and shall permit the debtor to resume making payments under the terms of the contract.

(2) The guaranteed opportunity to cure the default and stop the foreclosure as provided in this subsection shall not be available:

(A) To a debtor during the first 12 months of a mortgage agreement; or

(B) To a debtor more than once every 24 months and, in any event, no more than a total of three times during the term of such mortgage.

~~(b)(c)~~ The notice required by subsection (a) of this Code section shall ~~be given by mailing or delivering to the debtor a~~ include:

(1) A copy of the notice of sale to be submitted to the publisher;

(2) The name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor; and

(3) The following statement in boldface type:

'You may have the right under Georgia law to cure the default on your home loan and reinstate the loan to a current status by paying the lender the full amount of all past due payments along with any late fees, past due taxes, past due insurance, actual out-of-pocket attorney fees and foreclosure costs, advances made by the lender, and any other charges necessary to bring the debt current. Contact [NAME OF INDIVIDUAL OR ENTITY] at [TELEPHONE NUMBER] for more information.'

SECTION 8.

This Act shall become effective on August 1, 2010, and shall not be construed to alter the express terms of any mortgage contract entered into before that date.

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.